

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In re:

LLS AMERICA, LLC,

Debtor.

NO: CV-12-482-RMP

Bankruptcy No: 09-06194-PCW11

Adversary No: 11-80295

BRUCE P. KRIEGMAN, solely in his
capacity as court-appointed Chapter 11
Trustee for LLS America LLC,

Plaintiff,

vs.

1418490 ONTARIO, LTD., et al.,

Defendants.

ORDER GRANTING MOTION FOR
DEFAULT AND JUDGMENT

Before the Court is bankruptcy trustee Bruce P. Kriegman's Motion for Entry of Default and Judgment as to Defendant Cheryl Birner, ECF No. 8. The Court has reviewed the motion, its attachments, the Court's file, and the Bankruptcy Court's file for the adversary action 11-80295-PCW11.

This case arose as an adversary action as part of the bankruptcy of LLS

1 America, LLC. This Court withdrew the reference to this action, set a trial date,
2 and referred the matter back to the Bankruptcy Court for that court to address
3 pretrial matters.¹ The Bankruptcy Court entered orders granting the Bankruptcy
4 Trustee's motions for default and for default judgment. The trustee now moves
5 this Court for entry of default and default judgment.

6 "When a party against whom a judgment for affirmative relief is sought has
7 failed to plead or otherwise defend, and that failure is shown by affidavit or
8 otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 54(a). "If the
9 plaintiff's claim is for a sum certain or a sum that can be made certain by
10 computation, the clerk—on the plaintiff's request, with an affidavit showing the
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13 ¹The above-captioned action, CV-12-482-RMP, and CV-11-364-RMP both
14 arise from the bankruptcy adversary action 11-80295-PCW11. The Court entered
15 an order withdrawing the reference to 11-80295-PCW11 in CV-11-364-RMP. The
16 Court clarified in CV-11-364-RMP that withdrawal of the reference extended to
17 the entire adversary action and not just the parties seeking withdrawal.

18 Accordingly, this action has been withdrawn, trial has been set, and the matter has
19 been referred back to the Bankruptcy Court for disposition of pretrial matters as
20 expressed in the Court's orders in CV-11-364-RMP. An order of consolidation is
forthcoming.

1 amount due—must enter judgment for that amount and costs against a defendant
2 who has been defaulted for not appearing.” Fed. R. Civ. P. 54(b).

3 Pursuant to the Court’s order on motion for withdrawal of reference, this
4 Court will treat the Bankruptcy Court’s orders entering default and default
5 judgment as proposed findings of fact and conclusions of law. The instant motion
6 was filed on September 5, 2012. Defendant Cheryl Birner has filed no objection.
7 After a review of the record before this Court and the bankruptcy court, the Court
8 concludes that default is appropriate and default judgment shall be entered.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. The trustee’s Motion for Entry of Default and Judgment, **ECF No. 8**, is

11 **GRANTED.**

12 2. Defendant Cheryl Birner is in default, and default of said Defendant is
13 hereby entered.

14 3. The Court will enter default judgment by separate order.

15 **IT IS SO ORDERED.**

16 The District Court Executive is hereby directed to enter this Order and to
17 provide copies to counsel and to Judge Patricia C. Williams.

18 **DATED** this 1st day of November 2012.

19 s/ Rosanna Malouf Peterson
20 ROSANNA MALOUF PETERSON
Chief United States District Court Judge